

JOHN F. MURTHA, ESQ.
Nevada Bar No. 835
BRENOCH R. WIRTHLIN, ESQ.
Nevada Bar No. 10282
WOODBURN AND WEDGE
Sierra Plaza
6100 Neil Road, Ste. 500
Post Office Box 2311
Reno, Nevada 89505
Telephone: 775-688-3000
Facsimile : 775-688-3088

jmurtha@woodburnandwedge.com

Attorneys for Trustee
Angelique L.M. Clark

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

CETUS MORTGAGE, LTD.

Debtor.

Case No. BK-08-51131-GWZ
Chapter 7

ANGELIQUE L.M. CLARK,
TRUSTEE,

Adv. No. _____

Plaintiff,

**COMPLAINT TO AVOID TRANSFERS
PURSUANT TO 11 USC §§ 544, 547(b),
548(a) AND/OR NRS § 112.180**

vs.

MOSSNEVADA, LLC, a Nevada
limited liability company,

Defendant.

1
2 Plaintiff Angelique L.M. Clark, Trustee, by and through her counsel Woodburn
3 and Wedge complains and alleges as follows:
4

5 I

6 **PARTIES, JURISDICTION AND VENUE**

7 1. This case presents claims that arise under Title 11 USC and, therefore,
8 this Court has jurisdiction over this matter pursuant to the provisions of 28 USC §
9 1334(b).

10 2. This matter presents issues relating to the determination, avoidance and
11 recovery of preferential transfers and fraudulent conveyances and, therefore, the claims
12 alleged herein are core proceedings under the provisions of 28 USC § 157(b)(2)(F) and
13 (H).
14

15 3. This Court is a proper venue for this case under the provisions of 28 USC
16 § 1409(a).

17 4. Plaintiff Angelique L.M. Clark ("Clark") is the duly appointed trustee of the
18 Chapter 7 bankruptcy estate of Cetus Mortgage, Ltd. ("Cetus") pending before this Court
19 as Case No. BK-08-51131 ("Bankruptcy").
20

21 5. The named Defendant ("Defendant") conducted business with Cetus within
22 Washoe County, Nevada, and the claims asserted herein relate to such business
23 activities. Clark is uncertain whether the Defendant's full legal name, the nature of the
24 Defendant's existence (corporation, partnership, limited liability company, etc.) and the
25 named Trustee(s) of the Trust, if applicable, are correct and, therefore, reserves the
26 right to amend this Complaint at the appropriate time to properly identify the Defendant.
27
28

11

- A. Forged signatures on property conveyances;
- B. Altered property descriptions in deeds of trust without proper authorization;
- C. Failed to properly account for investors' funds; and
- D. Committed other violations of law.

11. Cetus allowed its Nevada mortgage company license to expire without renewal on June 30, 2008.

12. Cetus filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code with this Court on July 9, 2008, commencing the above captioned Bankruptcy.

13. On July 17, 2008, Clark was appointed Trustee of Cetus' bankruptcy estate pursuant to the provisions of 11 USC § 1104. Cetus' Chapter 11 case was converted to Chapter 7 proceedings on August 19, 2008, and Clark was subsequently appointed Trustee of Cetus' Chapter 7 estate.

14. Pursuant to 11 USC § 704, one of the duties of bankruptcy trustees is to investigate the financial affairs of the debtor. Clark has investigated, and continues to investigate, Cetus' financial affairs. To date, Clark's investigation has revealed, among other things, that:

- A. Contrary to Nevada state law and regulations governing mortgage companies, Cetus commingled investors' funds;
- B. Cetus used monies invested by lenders for purposes other than for which they were invested; and
- C. Cetus, in some instances, failed to repay investors when loans they funded were paid in full by the borrowers and, instead, used the repayment funds to

1
2 pay other investor claims or fund its operations. In turn, Cetus used other
3 investors' investment funds to continue to pay interest to the prior investors
4 to make it appear borrowers were still making interest payments on the
5 loans.

6 15. Based upon her investigations to date, Clark alleges that Cetus was
7 engaged in a phony investment scheme in which:

- 8 A. Monies paid by later investors were, at times, used to pay returns on
9 investments to earlier investors while no actual return had been received on
10 behalf of the earlier investors;
11 B. Monies that properly belonged to certain investors were used to continue to
12 pay interest on investments made by other investors in an attempt to cover
13 up the fact the other investors' loans had gone into default; and
14 C. Monies invested by later investors was used to fund prior loans from which
15 Cetus had improperly diverted funds to cover up the fact loan funds had
16 been misused.

17 16. Clark alleges that Cetus engaged in the phony investment activities
18 referenced in Paragraph 14, above, for the purpose of causing investors, old and new, to
19 continue to invest with Cetus, i.e. Cetus was engaged in a Ponzi scheme.

20 III

21 FIRST CLAIM FOR RELIEF
22 (Preference—11 USC §547(b))

23 17. Clark repeats each and every allegation contained in Paragraphs 1 through
24 16, above, and incorporates the same herein as if set forth in their entirety.

25 18. Based upon information available from Cetus' books and records, Clark is
26 informed and believes, and on that basis alleges, that from and after April 10, 2008, and
27 up until Cetus filed for bankruptcy relief, it made the following payments to the Defendant:

28 ///

DATE	CHECK NO	AMOUNT
04/18/2008	96647	\$900.00
04/22/2008	96689	\$900.00
05/01/2008	96885	\$3,866.00
05/01/2008	96911	\$1,200.00
05/01/2008	96971	\$1,075.00
05/06/2008	97108	\$1,075.00
05/22/2008	97453	\$900.00
05/22/2008	97484	\$900.00
05/29/2008	97618	\$1,200.00
05/29/2008	97637	\$1,075.00
06/06/2008	97712	\$3,866.00
06/13/2008	97913	\$1,075.00
06/19/2008	98000	\$900.00
06/19,2008	98012	\$900.00
06/26/2008	98101	\$1,075.00

19. At the time the payments set forth in Paragraph 18, above, were made the Defendant was a creditor of Cetus for purposes of 11 USC §547(b)(1).

20. The payments referenced in Paragraph 18, above, were for or on account of an antecedent debt owed by Cetus before the payments were made.

21. Cetus was insolvent at the time it made the payments referenced in Paragraph 18, above.

22. The payments referenced in Paragraph 18, above, were made on or within ninety (90) days before Cetus filed its Chapter 11 petition in this matter.

23. Should the Defendant be allowed to retain the payments referenced in Paragraph 18, above, it would receive more than it would otherwise receive if (a) this case were a chapter 7 case under Title 11; (b) the transfer had not been made; and (c) it received payment of such debt to the extent provided by Title 11.

///

Wherefore, Clark prays for relief as hereinafter set forth.

SECOND CLAIM FOR RELIEF
(Fraudulent Transfers—11 USC §548(a)(1)(A))

26. Based upon information available from Cetus' books and records, Clark is informed and believes, and on that basis alleges, that from and after July 10, 2006, and up until Cetus filed for bankruptcy relief on July 9, 2008, it made payments to the Defendant and/or gave the Defendant interests in promissory notes, and that the aggregate value of the payments and the interests in the notes exceeded the amounts the Defendant had invested with Cetus ("Excess Transfers").

28. Cetus made the Excess Transfers listed in Paragraph 26, above, with actual intent to hinder, delay, or defraud persons or entities to which Cetus was, or would become, indebted.

Wherefore, Clark prays for relief as hereinafter set forth.

V

**THIRD CLAIM FOR RELIEF
(Fraudulent Transfers—11 USC §548(a)(1)(B))**

30. Clark repeats each and every allegation contained in Paragraphs 1 through 29, above, and incorporates the same herein as if set forth in their entirety.

31. At the time Cetus made the Excess Transfers referenced in Paragraph 26, above, Cetus received less than equivalent value in exchange for the payment.

32. At the time Cetus made the Excess Transfers referenced in Paragraph 26, above, Cetus was either insolvent or rendered insolvent as a result of the payments.

33. The Excess Transfers referenced in Paragraph 26, above, constitute fraudulent transfers pursuant to 11 USC §548(a)(1)(B) that may be avoided by this Court.

Wherefore, Clark prays for relief as hereinafter set forth.

VI

**FOURTH CLAIM FOR RELIEF
(Fraudulent Transfers—NRS §112.180(1)(a))**

34. Clark repeats each and every allegation contained in Paragraphs 1 through 33, above, and incorporates the same herein as if set forth in their entirety.

35. Pursuant to 11 USC §544, Clark has the rights and powers of a lien creditor and as a successor to certain creditors and purchasers which provides her with standing to bring any fraudulent transfer actions that may exist under non-bankruptcy law.

36. Based upon information available from Cetus' books and records, Clark is informed and believes, and on that basis alleges, that from and after July 10, 2004, and up until Cetus filed for bankruptcy relief on July 9, 2008, it made payments to the Defendant

1
2 and/or gave the Defendant interests in promissory notes, and that the aggregate value of
3 the payments and the interests in the notes exceeded the amounts it had invested with
4 Cetus ("Excess Transfers").

5
6 37. Cetus made the Excess Transfers listed in Paragraph 36, above, with actual
7 intent to hinder, delay, or defraud its creditors.

8
9 38. The Excess Transfers referenced in Paragraph 36, above, constitute
10 fraudulent transfers pursuant to NRS §112.180(1)(a) that may be avoided by this Court.

11 Wherefore, Clark prays for relief as follows:

12 A. For an order voiding the payments referenced in Paragraph 15 as
13 preferential transfers under the provisions of 11 USC §577(b)(1);

14 B. For an order voiding the Excess Transfers referenced in Paragraph 26 as
15 fraudulent transfers under the provisions of 11 USC § 548(a)(1)(A);

16 C. For an order voiding the Excess Transfers referenced in Paragraph 26 as
17 fraudulent transfers under the provisions of 11 USC § 548(a)(1)(B);

18 D. For an order voiding the Excess Transfers referenced in Paragraph 36 as
19 fraudulent transfers under the provisions of NRS §112.180(1)(a);

20 E. For judgment against the Defendant, or any immediate or mediate
21 transferee of any preferential payment or fraudulent transfer, in an amount to be proven at
22 the trial in this matter, as provided in 11 USC §550;

23 F. For an award of costs incurred in connection with the prosecution of this
24 matter;

25
26 ///

1
2 G. For an award of attorneys' fees incurred in connection with the prosecution
3 of this matter; and

4 H. For such other and further relief as to this Court is necessary or appropriate
5 under the circumstances.
6

7 DATED this 30th day of June, 2010.

8 WOODBURN and WEDGE
9

10 By _____

11 John F. Murtha, Esq.
12 Attorneys for Trustee
13 Angelique L.M. Clark
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28